

 **99hr\_AC-JPP\_ab0079\_pt01**



(FORM UPDATED: 08/11/2010)

## **WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS**

**1999-00**

(session year)

**Assembly**

(Assembly, Senate or Joint)

**Committee on ... Judiciary and Personal Privacy  
(AC-JPP)**

### **COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### **INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Mike Barman (LRB) (May/2012)

## Assembly

### Record of Committee Proceedings

#### **Committee on Judiciary and Personal Privacy**

##### **Assembly Bill 79**

Relating to: crimes affecting certain flags and providing penalties.

By Representatives Pettis, Suder, Petrowski, Townsend, Montgomery, Jensen, Freese, Sykora, Huebsch, Ladwig, F. Lasee, Ainsworth, Hahn, Urban, Goetsch, Kedzie, Handrick, Vrakas, Hoven, Johnsrud, Musser, Kreuser, Seratti, Albers, Gard, Ziegelbauer, Brandemuehl, Owens, Ryba, Kreibich, Gunderson, Kelso, Kaufert and Meyerhofer; cosponsored by Senators Zien, Breske, Fitzgerald, Welch, Drzewiecki, Huelsman, Roessler, Darling, Rude, Panzer, Schultz, Farrow and A. Lasee.

February 2, 1999      Referred to committee on Judiciary and Personal Privacy.

February 9, 1999      **PUBLIC HEARING HELD**

Present:    (9)      Representatives Huebsch, Gundrum, Walker,  
Suder, Grothman, Sherman, Colon, Hebl and  
Staskunas.

Excused:   (0)      None.

##### Appearances for

- Rep. Mark Pettis, 28th Assembly District
- Senator Dave Zien, 23rd Senate District
- Robert Zukowski, Citizen's Flag Alliance
- Secretary Raymond G. Boland, WI Dept. of Veteran's Affairs
- Dave Wegener, State Commander American Legion
- Rep. Scott Suder, 65th Assembly District

##### Appearances against

- Chris Ahmuty, ACLU of Wisconsin

##### Appearances for Information Only

- None.

##### Registrations for

- Russ Peck, American Legion
- LTL (R) Tom Christianson, Sun Prairie
- Lawrence Danielson, VFW Madison
- Rep. Steve Nass, 31st Assembly District

##### Registrations against

- None.

February 10, 1999

## **EXECUTIVE SESSION**

Present: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Excused: (0) None.

Moved by Representative Walker, seconded by Representative Gundrum, that **Amendment 1** be recommended for introduction and adoption.

Ayes: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (0) None.

Excused:(0) None.

INTRODUCTION AND ADOPTION RECOMMENDED, Ayes 9,  
Noes 0, Excused 0

Moved by Representative Walker, seconded by Representative Gundrum, that **Amendment 2** be recommended for introduction and adoption.

Ayes: (8) Representatives Huebsch, Gundrum, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (1) Representative Walker.

Excused:(0) None.

INTRODUCTION AND ADOPTION RECOMMENDED, Ayes 8,  
Noes 1, Excused 0

Moved by Representative Walker, seconded by Representative Gundrum, that **Amendment 3** be recommended for introduction and adoption.

Ayes: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (0) None.

Excused:(0) None.

INTRODUCTION AND ADOPTION RECOMMENDED, Ayes 9,  
Noes 0, Excused 0

Moved by Representative Staskunas, seconded by Representative Walker, that **Amendment 4** be recommended for introduction and adoption.

Ayes: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (0) None.

Excused:(0) None.

INTRODUCTION AND ADOPTION RECOMMENDED, Ayes 9,  
Noes 0, Excused 0

Moved by Representative Huebsch, seconded by Representative Gundrum, that **Amendment 5** be recommended for introduction.

Ayes: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (0) None.

Excused:(0) None.

INTRODUCTION RECOMMENDED, Ayes 9, Noes 0, Excused 0

Moved by Representative Huebsch, seconded by Representative Gundrum, that **Amendment 6** be recommended for introduction.

Ayes: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (0) None.

Excused:(0) None.

INTRODUCTION RECOMMENDED, Ayes 9, Noes 0, Excused 0

Moved by Representative Huebsch, seconded by Representative Gundrum, that **Amendment 7** be recommended for introduction.

Ayes: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (0) None.

Excused:(0) None.

INTRODUCTION RECOMMENDED, Ayes 9, Noes 0, Excused 0

Moved by Representative Staskunas, seconded by Representative Hebl, that **Amendment 7** be recommended for adoption.

Ayes: (6) Representatives Gundrum, Walker, Sherman, Colon, Hebl and Staskunas.

Noes: (3) Representatives Huebsch, Suder and Grothman.

Excused:(0) None.

ADOPTION RECOMMENDED, Ayes 6, Noes 3, Excused 0

Moved by Representative Huebsch, seconded by Representative Gundrum, that **Amendment 8** be recommended for introduction.

Ayes: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (0) None.

Excused:(0) None.

INTRODUCTION RECOMMENDED, Ayes 9, Noes 0, Excused 0

Moved by Representative Staskunas, seconded by Representative Hebl, that **Amendment 8** be recommended for adoption.

Ayes: (4) Representatives Sherman, Colon, Hebl and Staskunas.

Noes: (5) Representatives Huebsch, Gundrum, Walker, Suder and Grothman.

Excused:(0) None.

ADOPTION RECOMMENDED, Ayes 4, Noes 5, Excused 0

Moved by Representative Huebsch, seconded by Representative Gundrum, that **Amendment 9** be recommended for introduction.

Ayes: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (0) None.

Excused:(0) None.

INTRODUCTION RECOMMENDED, Ayes 9, Noes 0, Excused 0

Moved by Representative Staskunas, seconded by Representative Hebl, that **Amendment 9** be recommended for adoption.

Ayes: (8) Representatives Huebsch, Gundrum, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (1) Representative Walker.

Excused:(0) None.

ADOPTION RECOMMENDED, Ayes 8, Noes 1, Excused 0

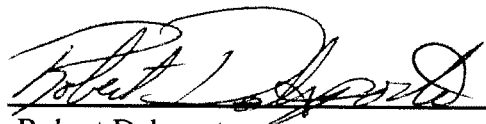
Moved by Representative Gundrum, seconded by Representative Staskunas, that **Assembly Bill 79** be recommended for passage as amended.

Ayes: (6) Representatives Huebsch, Gundrum, Walker, Suder, Grothman and Hebl.

Noes: (3) Representatives Sherman, Colon and Staskunas.

Excused:(0) None.

PASSAGE AS AMENDED RECOMMENDED, Ayes 6, Noes 3,  
Excused 0

  
Robert Delaporte  
Committee Clerk

# Vote Record

## Assembly Committee on Judiciary and Personal Privacy

Date: 2-10-99  
Moved by: Walker Seconded by: Gundrum  
AB: 79 Clearinghouse Rule: \_\_\_\_\_  
AB: \_\_\_\_\_ SB: \_\_\_\_\_ Appointment: \_\_\_\_\_  
AJR: \_\_\_\_\_ SJR: \_\_\_\_\_ Other: \_\_\_\_\_  
A: \_\_\_\_\_ SR: \_\_\_\_\_

A/S Amdt: 1  
A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
A/S Sub Amdt: \_\_\_\_\_  
A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_  
A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

- ☐ Passage  
☐ Introduction  
☒ Adoption  
☐ Rejection

- ☐ Indefinite Postponement  
☐ Tabling  
☐ Concurrence  
☐ Nonconcurrence  
☐ Confirmation

### Committee Member

Rep. Michael Huebsch, Chair  
Rep. Mark Gundrum  
Rep. Scott Walker  
Rep. Scott Suder  
Rep. Glenn Grothman  
Rep. Gary Sherman  
Rep. Pedro Colon  
Rep. Tom Hebl  
Rep. Tony Staskunas

<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 9 \_\_\_\_\_

1-0

☒ Motion Carried

☐ Motion Failed

# Vote Record

## Assembly Committee on Judiciary and Personal Privacy

Date: 2-10-99  
 Moved by: Walker Seconded by: Gundrum  
 AB: 79 Clearinghouse Rule: \_\_\_\_\_  
 AB: \_\_\_\_\_ SB: \_\_\_\_\_ Appointment: \_\_\_\_\_  
 AJR: \_\_\_\_\_ SJR: \_\_\_\_\_ Other: \_\_\_\_\_  
 A: \_\_\_\_\_ SR: \_\_\_\_\_

A/S Amdt: 2 (0074)  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
 A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

- ☐ Passage  
☐ Introduction  
☒ Adoption  
☐ Rejection

- ☐ Indefinite Postponement  
☐ Tabling  
☐ Concurrence  
☐ Nonconcurrence  
☐ Confirmation

### Committee Member

Rep. Michael Huebsch, Chair  
 Rep. Mark Gundrum  
 Rep. Scott Walker  
 Rep. Scott Suder  
 Rep. Glenn Grothman  
 Rep. Gary Sherman  
 Rep. Pedro Colon  
 Rep. Tom Hebl  
 Rep. Tony Staskunas

Aye	No	Absent	Not Voting
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 8 1 \_\_\_\_\_

☒ Motion Carried

☐ Motion Failed



# Vote Record

## Assembly Committee on Judiciary and Personal Privacy

Date: 2-10-93

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

AB: 79

Clearinghouse Rule: \_\_\_\_\_

AB: \_\_\_\_\_ SB: \_\_\_\_\_

Appointment: \_\_\_\_\_

AJR: \_\_\_\_\_ SJR: \_\_\_\_\_

Other: \_\_\_\_\_

A: \_\_\_\_\_ SR: \_\_\_\_\_

A/S Amdt: 3

A/S Amdt: \_\_\_\_\_

to A/S Amdt: \_\_\_\_\_

A/S Sub Amdt: \_\_\_\_\_

A/S Amdt: \_\_\_\_\_

to A/S Sub Amdt: \_\_\_\_\_

A/S Amdt: \_\_\_\_\_

to A/S Amdt: \_\_\_\_\_

to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

☐ Passage

☐ Introduction

☒ Adoption

☐ Rejection

☐ Indefinite Postponement

☐ Tabling

☐ Concurrence

☐ Nonconcurrence

☐ Confirmation

### Committee Member

Rep. Michael Huebsch, Chair

Rep. Mark Gundrum

Rep. Scott Walker

Rep. Scott Suder

Rep. Glenn Grothman

Rep. Gary Sherman

Rep. Pedro Colon

Rep. Tom Hebl

Rep. Tony Staskunas

Aye

No

Absent

Not Voting

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Totals:

9

9-0



Motion Carried



Motion Failed

# Vote Record

## Assembly Committee on Judiciary and Personal Privacy

Date: 2-10-99  
 Moved by: Staskunas Seconded by: Walter  
 AB: 79 Clearinghouse Rule: \_\_\_\_\_  
 AB: \_\_\_\_\_ SB: \_\_\_\_\_ Appointment: \_\_\_\_\_  
 AJR: \_\_\_\_\_ SJR: \_\_\_\_\_ Other: \_\_\_\_\_  
 A: \_\_\_\_\_ SR: \_\_\_\_\_

A/S Amdt: 4  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
 A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

- ☐ Passage  
☐ Introduction  
☒ Adoption  
☐ Rejection

- ☐ Indefinite Postponement  
☐ Tabling  
☐ Concurrence  
☐ Nonconcurrence  
☐ Confirmation

### Committee Member

Rep. Michael Huebsch, Chair  
 Rep. Mark Gundrum  
 Rep. Scott Walker  
 Rep. Scott Suder  
 Rep. Glenn Grothman  
 Rep. Gary Sherman  
 Rep. Pedro Colon  
 Rep. Tom Hebl  
 Rep. Tony Staskunas

Aye	No	Absent	Not Voting
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals:

9

-

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9-0

☒ Motion Carried

☐ Motion Failed

# Vote Record

## Assembly Committee on Judiciary and Personal Privacy

Date: 2-10-99  
 Moved by: Staskunas Seconded by: Hebl  
 AB: \_\_\_\_\_ Clearinghouse Rule: \_\_\_\_\_  
 AB: \_\_\_\_\_ SB: \_\_\_\_\_ Appointment: \_\_\_\_\_  
 AJR: \_\_\_\_\_ SJR: \_\_\_\_\_ Other: \_\_\_\_\_  
 A: \_\_\_\_\_ SR: \_\_\_\_\_

A/S Amdt: 7  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
 A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

- ☐ Passage  
☐ Introduction  
☒ Adoption  
☐ Rejection

- ☐ indefinite Postponement  
☐ Tabling  
☐ Concurrence  
☐ Nonconcurrence  
☐ Confirmation

### Committee Member

Rep. Michael Huebsch, Chair  
 Rep. Mark Gundrum  
 Rep. Scott Walker  
 Rep. Scott Suder  
 Rep. Glenn Grothman  
 Rep. Gary Sherman  
 Rep. Pedro Colon  
 Rep. Tom Hebl  
 Rep. Tony Staskunas

Aye	No	Absent	Not Voting
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 6 3 \_\_\_\_\_

☒ Motion Carried

☐ Motion Failed

# Vote Record

## Assembly Committee on Judiciary and Personal Privacy

Date: 2-10-99  
 Moved by: Staskunas Seconded by: Hebl  
 AB: 79 Clearinghouse Rule: \_\_\_\_\_  
 AB: \_\_\_\_\_ SB: \_\_\_\_\_ Appointment: \_\_\_\_\_  
 AJR: \_\_\_\_\_ SJR: \_\_\_\_\_ Other: \_\_\_\_\_  
 A: \_\_\_\_\_ SR: \_\_\_\_\_

A/S Amdt: 8  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
 A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

- ☐ Passage  
☐ Introduction  
☒ Adoption  
☐ Rejection

- ☐ Indefinite Postponement  
☐ Tabling  
☐ Concurrence  
☐ Nonconcurrence  
☐ Confirmation

### Committee Member

Rep. Michael Huebsch, Chair  
 Rep. Mark Gundrum  
 Rep. Scott Walker  
 Rep. Scott Suder  
 Rep. Glenn Grothman  
 Rep. Gary Sherman  
 Rep. Pedro Colon  
 Rep. Tom Hebl  
 Rep. Tony Staskunas

Aye	No	Absent	Not Voting
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 4 5 \_\_\_\_\_

☐ Motion Carried

☒ Motion Failed

# Vote Record

## Assembly Committee on Judiciary and Personal Privacy

Date: 2-10-99

Moved by:

AB: 79

AB: \_\_\_\_\_ SB: \_\_\_\_\_

AJR: \_\_\_\_\_ SJR: \_\_\_\_\_

A: \_\_\_\_\_ SR: \_\_\_\_\_

Seconded by: \_\_\_\_\_

Clearinghouse Rule: \_\_\_\_\_

Appointment: \_\_\_\_\_

Other: \_\_\_\_\_

A/S Amdt: #9(0062)

A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_

A/S Sub Amdt: \_\_\_\_\_

A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

- ☐ Passage  
☐ Introduction  
☒ Adoption  
☐ Rejection

- ☐ Indefinite Postponement  
☐ Tabling  
☐ Concurrence  
☐ Nonconcurrence  
☐ Confirmation

### Committee Member

Rep. Michael Huebsch, Chair

Rep. Mark Gundrum

Rep. Scott Walker

Rep. Scott Suder

Rep. Glenn Grothman

Rep. Gary Sherman

Rep. Pedro Colon

Rep. Tom Hebl

Rep. Tony Staskunas

Aye

No

Absent

Not Voting

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Totals:

8

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☐ Motion Carried

☐ Motion Failed

# Vote Record

## Assembly Committee on Judiciary and Personal Privacy

Date: 2-10-99  
 Moved by: Gundrum Seconded by: Staskunas  
 AB: 79 Clearinghouse Rule: \_\_\_\_\_  
 AB: \_\_\_\_\_ SB: \_\_\_\_\_ Appointment: \_\_\_\_\_  
 AJR: \_\_\_\_\_ SJR: \_\_\_\_\_ Other: \_\_\_\_\_  
 A: \_\_\_\_\_ SR: \_\_\_\_\_

A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_  
 A/S Sub Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

- ☒ Passage *as amended*  
☐ Introduction  
☐ Adoption  
☐ Rejection

- ☐ indefinite Postponement  
☐ Tabling  
☐ Concurrence  
☐ Nonconcurrence  
☐ Confirmation

### Committee Member

Rep. Michael Huebsch, Chair  
 Rep. Mark Gundrum  
 Rep. Scott Walker  
 Rep. Scott Suder  
 Rep. Glenn Grothman  
 Rep. Gary Sherman  
 Rep. Pedro Colon  
 Rep. Tom Hebl  
 Rep. Tony Staskunas

Aye	No	Absent	Not Voting
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 6 3 \_\_\_\_\_

☒ Motion Carried

☐ Motion Failed





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## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

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DATE: February 8, 1999

TO: REPRESENTATIVE MICHAEL HUEBSCH, CHAIRPERSON, ASSEMBLY  
COMMITTEE ON JUDICIARY AND PERSONAL PRIVACY

FROM: Don Dyke, Senior Staff Attorney

SUBJECT: 1999 Assembly Bill 79, Relating to Crimes Affecting Certain Flags and  
Providing Penalties

This memorandum, prepared at your request: (1) describes the provisions of 1999 Assembly Bill 79, relating to crimes affecting certain flags and providing penalties; and (2) describes the provisions of s. 946.05, Stats., relating to flag desecration, and briefly summarizes *State v. Janssen*, 219 Wis. 2d 362, 580 N.W.2d 260 (1998), which held s. 946.05 to be unconstitutionally overbroad.

### A. 1999 ASSEMBLY BILL 79

#### 1. Causing Violence or Breach of Peace by Damaging or Destroying Certain Flags

Assembly Bill 79 prohibits a person from destroying, damaging or mutilating a flag, or urinating, defecating or expectorating upon a flag, with the intent to cause imminent violence or a breach of the peace under circumstances in which the actor knows that his or her conduct is likely to cause violence or a breach of the peace. The penalty for violation of the prohibition is a Class E felony, currently punishable by a maximum \$10,000 fine or a maximum imprisonment of two years, or both; for offenses on or after December 31, 1999, punishable by a maximum \$10,000 fine, maximum imprisonment of five years, or both.

"Flag" is defined as: (a) a flag of the United States consisting of horizontal stripes, alternately colored red and white, and a union of any number of white stars on a blue field; (b) a Wisconsin state flag, as described under s. 1.08 (1), Stats., or any flag that may be used as a state flag under s. 1.08 (2), Stats.; or (c) any copy, picture or representation of a flag specified in (a) or (b).



## **2. Criminal Damage to or Placing Graffiti on a Flag**

**Current law:** (a) contains general prohibitions against intentionally destroying or damaging the property of another without that person's consent [see, for example, s. 943.01, Stats.]; and (b) contains prohibitions against damaging or destroying property belonging to certain persons and damaging or destroying specific types of property. Among the latter is s. 943.012, Stats., which prohibits intentionally damaging, marking, drawing or writing on or etching into specified physical property, with knowledge of the character of the property, including: a church, synagogue or other structure or place used for religious worship or another religious purpose; a cemetery, mortuary or other place used for burial or memorializing the dead; an educational facility or community center publicly identified as associated with a group of persons of a particular race, religion, color, disability, sexual orientation, national origin or ancestry or by an institution of any such group; or any personal property contained in any of the foregoing if the personal property has particular significance or value to a group of persons of a particular race, religion, color, disability, sexual orientation, national origin or ancestry and the actor knows of the significance or value. The penalty for violating the prohibition of s. 943.012, Stats., a Class E felony, is a fine not to exceed \$10,000 or imprisonment not to exceed two years, or both; if the offense occurs on or after December 31, 1999, a fine of not to exceed \$10,000 or imprisonment not to exceed five years, or both.

**Assembly Bill 79** adds a flag to the types of property that fall within the prohibition of s. 943.012, Stats. Thus, under Assembly Bill 79, a person is prohibited from intentionally causing damage to, marking, drawing or writing on or etching into a U.S. or state flag that belongs to another person without the owner's consent and with knowledge of the character of the property. The penalty for violation of the new prohibition is identical to the current penalty for violation of s. 943.012, Stats., a Class E felony. "Flag" is defined in the same manner as the definition of flag under the new prohibition in the bill against damaging or destroying a flag with intent to cause violence or breach of the peace, described above.

## **3. Penalty Enhancer for Crimes Involving Damage to or Destruction of a Flag**

Section 939.645, Stats., **currently** provides enhanced penalties for what are generally categorized as "hate crimes." Under this section, a person is subject to enhanced penalties if the person commits a crime under chs. 939 to 948, Stats. (Criminal Code), and intentionally selects the person against whom the crime is committed or selects the property that is damaged or otherwise affected by the crime in whole or in part because of the actor's belief or perception regarding the race, religion, color, disability, sexual orientation, national origin or ancestry of the victim of the crime. [s. 939.645 (1), Stats.] Under sub. (2) of the statute, penalties are increased as follows:

a. If the person committed a misdemeanor punishable by a maximum fine of \$1,000 or less and a maximum term of imprisonment of 90 or fewer days, the maximum fine is increased to \$10,000 and the maximum term of imprisonment is increased to one year (in the county jail).

b. If the person committed a misdemeanor punishable by a maximum fine of \$10,000 and a maximum term of imprisonment of nine months, the maximum fine remains the same, the

maximum term of imprisonment is increased to two years and the status of the crime is changed to a felony.

c. If the person committed a felony, the maximum fine is increased by not more than \$5,000 and the maximum term of imprisonment is increased by not more than five years.

**Assembly Bill 79** creates a penalty enhancer that applies to a person who commits a crime under chs. 939 to 948, Stats., and while committing the crime, intentionally destroys, damages or mutilates a U.S. or state flag or intentionally urinates, defecates or expectorates upon a U.S. or state flag. For this purpose, "flag" has the same definition as that contained in the provision of Assembly Bill 79 that creates the prohibition against damaging or destroying a flag with intent to cause violence or breach of the peace, described under Section A. 1., above. The penalty increases for the provision created by the bill are the same as those provided under the current "hate crimes" penalty enhancer. Note that the bill's penalty enhancers do not apply to a crime if proof of destruction or mutilation of a flag, damage to a flag or urination, defecation or excretion upon a flag is required for a conviction of that crime.

Assembly Bill 79 also creates a new disposition option for juveniles who are found to have committed a violation of the prohibition against intentionally destroying, damaging or mutilating a flag, or intentionally urinating, defecating or expectorating upon a flag, while committing a crime. The option, which is in addition to other dispositions imposed by the court, authorizes the court to order the juvenile to participate in an educational program that teaches the history of the U.S. flag and the Wisconsin state flag and the significance of those flags to the nation and the state.

#### **4. Civil Cause of Action for Certain Conduct Involving a Flag**

**Current law** provides a civil cause of action for a person who suffers physical injury, emotional distress or incurs property damage by reason of conduct which is prohibited under s. 943.012, Stats., relating to criminal damage to or graffiti on religious and other property, described under Section A. 2., above, or which is grounds for a penalty increase under the "hate crimes" penalty enhancer statute, s. 939.645, Stats., described under Section A. 3., above. The statute allows recovery to a prevailing plaintiff of special and general damages, including damages for emotional distress, punitive damages, and costs, including all reasonable attorney fees and other costs of the investigation and litigation reasonably incurred.

**Assembly Bill 79**, by its additions to ss. 943.012 and 939.645, Stats., creates a cause of action under s. 895.75, Stats., in the following circumstances:

a. When a person suffers physical injury or emotional distress or incurs property damage as a result of the intentional damaging, marking, drawing or writing on or etching into a U.S. or state flag without the owner's consent and with knowledge of the character of the property.

b. When a person suffers physical injury or emotional distress or incurs property damage as a result of the intentional destruction, damaging or mutilation of the U.S. or state flag or

the intentional urination, defecation or expectoration upon a U.S. or state flag while a crime is being committed.

**B. SECTION 946.05, STATS., AND STATE V. JANSSEN**

**1. Section 946.05, Stats.**

Section 946.05 (1), Stats., provides that whoever intentionally and publicly mutilates, defiles, or casts contempt upon the flag is guilty of a Class E felony. The current penalty for a Class E felony is a fine not to exceed \$10,000 or imprisonment not to exceed two years, or both; for offenses on or after December 31, 1999, the penalty for a Class E felony is a fine not to exceed \$10,000 or imprisonment not to exceed five years, or both.

For purposes of s. 946.05, "flag" is defined as "anything which is or purports to be the Stars and Stripes, the United States shield, the United States coat of arms, the Wisconsin state flag, or a copy, picture or representation of any of them." [s. 946.05 (2), Stats.]

**2. State v. Janssen**

The constitutionality of s. 946.05, Stats., was at issue in *State v. Janssen*, 219 Wis. 2d 362, 580 N.W.2d 260 (1998). Janssen was charged with two counts of theft for stealing U.S. flags from different locations in the City of Appleton and with one count of intentionally and publicly defiling the U.S. flag, in violation of s. 946.05 (1), Stats., for defecating on the U.S. flag. The flag desecration charge was dismissed by the trial court on the grounds that s. 946.05 (1), Stats., is unconstitutionally vague and overbroad on its face. The state appealed the circuit court's decision on the flag desecration charge.

In the court of appeals, Janssen asserted three arguments in his defense: (a) s. 946.05 (1) is unconstitutionally vague on its face; (b) s. 946.05 (1) is unconstitutionally overbroad on its face; and (c) s. 946.05 (1) is unconstitutional as applied to Janssen because his conduct constituted expression protected by the First Amendment. [*State v. Janssen*, 213 Wis. 2d 471, 570 N.W.2d 746 (Ct. App. 1997).]

The court of appeals concluded that Janssen lacked standing to assert a vagueness challenge because a reasonable person would not have any doubt that defecating on the flag falls within the statutory prohibition against defiling the flag. [*Id.*, 570 N.W.2d at 749, 750.] The court of appeals, however, concluded that s. 946.05 (1) is overbroad because it makes illegal acts which the U.S. Supreme Court has held are protected expression under the First Amendment. [*Id.*, 570 N.W.2d at 751.] The court of appeals declined to limit construction of s. 946.05 (1) or to sever any of its unconstitutional provisions because neither the statutory language nor its legislative history supported the state's suggested constructions of the statute. [*Id.*, 570 N.W.2d at 751, 752.] Finally, the court of appeals, because it found the statute unconstitutionally overbroad, did not reach the issue of whether the act of defecating on the flag was expression protected by the First Amendment. The Wisconsin Supreme Court granted the state's petition for review of the court of appeal's decision.

The issues before the Wisconsin Supreme Court on review were: (a) is s. 946.05 (1) unconstitutionally overbroad on its face; and (b) if so, can the constitutionality of the section be preserved by a limiting construction of the statute or by severing any of the unconstitutional provisions? The supreme court held that s. 946.05 (1) is unconstitutionally overbroad on its face and that its overbreadth cannot be cured by a limiting construction or by severing any of the statute's unconstitutional provisions. [*State v. Janssen*, 219 Wis. 2d 362, 580 N.W.2d 260 at 262 (1998).]

The supreme court began its analysis by considering the standard of review. The court observed that, ordinarily, a statute is presumed constitutional, requiring the party claiming unconstitutionality to prove the statute unconstitutional beyond a reasonable doubt. The court noted, however, that the burden shifts to the party attempting to uphold a statute when the statute infringes on the exercise of First Amendment rights. [*Id.*, 580 N.W.2d at 263; citations omitted.] Because the state conceded that the statute in question at least in part infringes on First Amendment rights, the burden in the case was on the state to establish the statute's constitutionality.

The court next reviewed the overbreadth doctrine noting that, while generally disfavored by courts, the doctrine is utilized in First Amendment cases because of the importance given to the protection of free speech. [*Id.*, 580 N.W.2d at 264-265.] The court cited the following definition of overbreadth: "A statute is overbroad when its language, given its normal meaning, is so sweeping that its sanctions may be applied to constitutionally protected conduct which the state is not permitted to regulate." [Citations omitted; *Id.*, 580 N.W.2d at 265.] In holding the statute in question overbroad because of the extent to which its prohibitions include protected expression, the supreme court made the following observations:

a. The "casts contempt upon" language of s. 946.05 (1):

... encompasses any speech that is defiant or contemptuous of, or which expresses distaste for the flag. In fact, this portion of the statute casts its jaundiced eye with such reprobation as to reveal that the only interest being served is the proscription of expressive communication. [Footnote omitted; *Id.*, 580 N.W.2d at 265.]

b. The language in s. 946.05 (1), Stats., barring persons from "mutilating" the flag:

... would make criminally punishable flag burning, tearing or cutting during a political protest, rally, or any other medium in which that person wishes to convey a message by doing so--expression which is explicitly protected by the First Amendment. We are confident in our prediction that fear of prosecution under this portion of the statute is likely to dissuade the citizens of this state from expressing themselves in a constitutionally protected manner. [*Id.*, 580 N.W.2d at 267.]

c. Under the general dictionary definition of the word "defile":

. . . one could be prosecuted [under s. 946.05 (1)] for any expressive act which makes the flag unclean for ceremonial use or which violates the chastity of the flag . . . . In short, any time a person expresses an opinion by defiling a flag--whether by attaching a symbol to the flag which makes it "unfit for ceremonial use" or renders it "filthy or dirty," or by spilling a foreign substance on the flag and thereby "debasing its pureness"--s. 946.05 (1) could be used to punish that person unconstitutionally. [*Id.*, 580 N.W.2d at 268.]

Finally, the court declined to construe or sever the statute to make it constitutional. The court cited the language of the statute itself, its legislative history, the apparent purpose of the statute to ban speech and conduct based on expressive content and the real and substantial overbreadth of the statute as reasons for so declining. [*Id.*, 580 N.W.2d at 268-270.]

If you have any questions or need additional information, please contact me at the Legislative Council Staff offices.

DD:wu:ksm;wu



**Delaporte, Robert**

**From:** Walker, Scott  
**Sent:** Tuesday, February 09, 1999 12:28 PM  
**To:** Huebsch, Michael; Rep.Huebsch  
**Cc:** Conlin, Robert; Rep.Pettis; Sen.Zien  
**Subject:** Amendments for committee

**Importance:** High

Mike,

I asked Bob to have two amendments drafted for the executive session on Wednesday:

**AB 79**

Page 5: delete lines 19 through 21

Page 5: line 25, delete Class E felony and replace with Class A misdemeanor

Please forward this memo to the other committee members so they will have advance notice of these amendments.

~~45 CFR~~

SEC 302.70

42 USC

SEC 666  
(A)(13)







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## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: February 12, 1999

TO: REPRESENTATIVE MICHAEL HUEBSCH, CHAIRPERSON, ASSEMBLY  
COMMITTEE ON JUDICIARY AND PERSONAL PRIVACY

FROM: Don Dyke, Senior Staff Attorney

SUBJECT: Amendments Recommended by Judiciary and Personal Privacy Committee to  
1999 Assembly Bill 79, Relating to Crimes Affecting Certain Flags and  
Providing Penalties

This memorandum, prepared at your request:

1. Describes the amendments recommended for adoption by the Assembly Committee on Judiciary and Personal Privacy to 1999 Assembly Bill 79, relating to crimes affecting certain flags and providing penalties; and
2. Describes Assembly Bill 79, as amended by the Judiciary and Personal Privacy Committee.

The Assembly Committee on Judiciary and Personal Privacy held a public hearing on Assembly Bill 79 on February 9, 1999. At the February 10 executive session on the proposal, the committee recommended for adoption Assembly Amendments 1, 2, 3, 4, 7 and 9. Assembly Bill 79, as amended, was recommended for passage by a vote of Ayes, 6; Noes, 3.

Note that a description of Assembly Bill 79, as introduced, is contained in a previous memorandum, dated February 8, 1999.

### **A. DESCRIPTION OF AMENDMENTS**

#### **1. Assembly Amendment 1**

Deletes throughout the bill, the phrase "urinates, defecates or expectorates upon a flag" and substitutes the phrase "causes a flag to come into contact with urine, feces or excretion." The substituted language reflects concern that the language in the original bill might be limited

in application to circumstances where the actor actually urinates, defecates or expectorates upon a flag and, thus, may not apply to circumstances where a person causes a flag to come into contact with urine, feces or expectionation.

**2. Assembly Amendment 2**

Deletes the Wisconsin state flag from the definition of "flag" that is used throughout the bill.

**3. Assembly Amendment 3**

Deletes from the definition of "flag" that is used throughout the bill "any copy, picture or representation of a flag" otherwise specified in the definition.

**4. Assembly Amendment 4**

Revises the penalty for violation of the bill's prohibition against causing violence or a breach of the peace by damaging or destroying a flag from a Class E felony to a Class A misdemeanor.

A Class E felony is punishable by a maximum fine of \$10,000, maximum imprisonment of two years, or both; for offenses that occur on or after December 31, 1999, the maximum imprisonment period increases to five years. [s. 939.50 (3) (e), Stats.] A Class A misdemeanor is punishable by a maximum fine of \$10,000, maximum imprisonment of nine months, or both. [s. 939.51 (3) (a), Stats.]

**5. Assembly Amendment 7**

Deletes the provision in the bill that makes it a Class E felony for a person to intentionally cause damage to, mark, draw or write on or etch into a flag that belongs to another person without the owner's consent and with knowledge of the character of the property. (Criminal damage to a flag would still be covered under s. 943.01, Stats.; graffiti on a flag would still be covered under s. 943.017, Stats. Under both statutes, the penalty would ordinarily be a Class A misdemeanor.)

**6. Assembly Amendment 9**

Deletes the civil causes of action for certain conduct involving a flag that were created by Assembly Bill 79.

Current law provides a civil cause of action for a person who suffers physical injury, emotional distress or incurs property damage by reason of conduct: (a) which is prohibited under s. 943.012, Stats., relating to criminal damage to or graffiti on religious and other property; or (b) which is grounds for a penalty increase under the "hate crimes" penalty enhancer statute, s. 939.645, Stats. The statute allows recovery to a prevailing plaintiff of special and

general damages, including damages for emotional distress, punitive damages and costs, including all reasonable attorney fees and other costs of the investigation and litigation reasonably incurred.

Assembly Bill 79, by its addition of flags to property covered by s. 943.012, Stats. (deleted by Assembly Amendment 7), and by its addition of destruction or damaging a U.S. flag while committing a crime to the penalty enhancer provisions of the current hate crimes law, s. 939.645, Stats., creates a civil cause of action in the following circumstances:

a. When a person suffers physical injury or emotional distress or incurs property damage as a result of the intentional damaging, marking, drawing or writing on or etching into a flag without the owner's consent and with knowledge of the character of the property.

b. When a person suffers physical injury or emotional distress or incurs property damage as a result of the intentional destruction, damaging or mutilation of a flag or the intentional urination, defecation or expectoration upon a flag while a crime is being committed.

*Assembly Amendment 9* deletes the two causes of civil action described above.

**B. ASSEMBLY BILL 79, AS RECOMMENDED BY THE COMMITTEE ON JUDICIARY AND PERSONAL PRIVACY**

Described below is the version of 1999 Assembly Bill 79 recommended for passage by the Assembly Committee on Judiciary and Personal Privacy. References below to Assembly Bill 79 are to the proposal as amended by Assembly Amendments 1, 2, 3, 4, 7 and 9.

**1. Causing Violence or Breach of Peace by Damaging or Destroying the U.S. Flag**

Assembly Bill 79, as amended, prohibits a person from destroying, damaging or mutilating a flag, or causing a flag to come into contact with urine, feces or expectoration, with the intent to cause imminent violence or a breach of the peace under circumstances in which the actor knows that his or her conduct is likely to cause violence or a breach of the peace. The penalty for violation of the prohibition is a Class A misdemeanor, punishable by a maximum \$10,000 fine, maximum imprisonment of nine months, or both.

For purposes of the prohibition, "flag" is defined as "a flag of the United States consisting of horizontal stripes, alternately colored red and white, and a union of any number of white stars on a blue field."

**2. Penalty Enhancer for Crimes Involving Damage to or Destruction of a Flag**

Section 939.645, Stats., *currently* provides enhanced penalties for what are generally categorized as "hate crimes." Under this section, a person is subject to enhanced penalties if the person commits a crime under chs. 939 to 948, Stats. (Criminal Code), and intentionally selects the person against whom the crime is committed or selects the property that is damaged or otherwise affected by the crime in whole or in part because of the actor's belief or perception regarding the race, religion, disability, sexual orientation, national origin or ancestry of the

victim of the crime. [s. 939.645 (1), Stats.] Under sub. (2) of the statute, penalties are increased as follows:

a. If the person committed a misdemeanor punishable by a maximum fine of \$1,000 or less and a maximum term of imprisonment of 90 or fewer days, the maximum fine is increased to \$10,000 and the maximum term of imprisonment is increased to one year (in the county jail).

b. If the person committed a misdemeanor punishable by a maximum fine of \$10,000 and a maximum term of imprisonment of nine months, the maximum fine remains the same, the maximum term of imprisonment is increased to two years and the status of the crime is changed to a felony.

c. If the person committed a felony, the maximum fine is increased by not more than \$5,000 and the maximum term of imprisonment is increased by not more than five years.

*Assembly Bill 79* creates a penalty enhancer that applies to a person who commits a crime under chs. 939 to 948, Stats. (Criminal Code), and while committing the crime, intentionally destroys, damages or mutilates a U.S. flag or intentionally causes a U.S. flag to come into contact with urine, feces or excretion. For this purpose, "flag" has the same definition as that contained in the provision of the proposal that creates the prohibition against damaging or destroying a flag with intent to cause violence or breach of the peace, described above. The penalty increases for the provision created by the bill are the same as those provided under the current "hate crimes" penalty enhancer. Note that the bill's penalty enhancers do not apply to a crime if proof of destruction or mutilation of a flag, damage to a flag or causing a flag to come into contact with urination, defecation or excretion is required for a conviction of that crime.

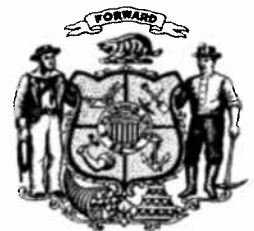
Assembly Bill 79 also creates a new disposition option for juveniles who are found to have committed a violation of the prohibition against intentionally destroying, damaging or mutilating a flag, or intentionally causing a flag to come into contact with urine, defecation or excretion, while committing a crime. The option, which is in addition to other dispositions imposed by the court, authorizes the court to order the juvenile to participate in an educational program that teaches the history of the U.S. flag and the significance of the flag to the nation.

If you have any questions or need additional information, please contact me at the Legislative Council Staff offices.

DD:kjf:tlw;wu



# WISCONSIN STATE LEGISLATURE



Date ?

To: Member of the Judiciary and Public Privacy Committee  
From: Rep. Mark Pettis  
Subject: Testimony in support of AB 79

Mr. Chairman, members of the committee, I want to thank you for the opportunity to come before you today and testify in support of Assembly Bill 79. I come before you today, not only as the sponsor of this bill, but as an American and a veteran who holds the flag and all it symbolizes near and dear to my heart. As you may know, this bill would create penalties for crimes that involve the damaging, destroying or mutilating a US or state flag. The definition of damaging or destroying would include urinating, defecating, or expectorating upon the flag. Intentionally damaging a flag that belongs to another person is also covered in this legislation. AB 79 also includes a penalty enhancer which would increase the penalties that can be levied against those who commit these types of crimes. The penalty enhancer would be the same as one that is in place for "hate crimes" which increases maximum fines, jail terms, and status of crime.

Many of you may remember Assembly Joint Resolution 52, AJR 52 as different from the bill you have before you today. AJR 52 simply urged Congress to begin the process of amending the constitution to enable Congress and the states to enact legislation prohibiting the desecration of the American flag. Assembly Joint Resolution 52 passed the Assembly 77-21 and then was ultimately approved by the Senate.

AB 79 is a much more specific piece of legislation. This bill addresses a specific objection of the Wisconsin State Supreme Court which stated the current law is unconstitutionally overbroad in *State v. Janssen*. The current law in Section 946.05 of the Wisconsin Statutes reads

946.05 Flag desecration.

946.05(1)

(1) Whoever intentionally and publicly mutilates, defiles, or casts contempt upon the flag is guilty of a Class E felony.

AB 79 seeks to strengthen that statute by adding more specific language to the statutes. The bill would prohibit a person from destroying, damaging, or mutilating a flag with the intent to cause imminent violence or a breach of the peace under circumstances in which the actor knows that his or her conduct is

likely to cause violence or a breach of the peace. That last statement taken from the bill summary and the penalty enhancers I spoke about earlier is essentially the difference between this bill and AJR 52. This bill specifically addresses the "unconstitutionally overboard" decision by the State Supreme Court by specifically addressing the violence or breach of peace that is a result of the damaging or mutilating of a flag in public. The currently law does not specifically define that and therefore was deemed "unconstitutionally overboard."

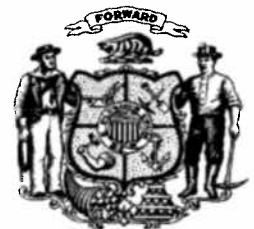
Leaving the legal support for this legislation behind, I want to personally address the need for this bill to be passed. I am a veteran and there are numerous other veterans that feel the same way I do. When I and others took the oath of enlistment, we promised to defend this nation and all it stands for. All it stands for is symbolized in the American flag. It is our national identity. When I see the flag it evokes a sense of pride that the United States stands for freedom and equality. The flag also reminds me of those who have sacrificed their lives to preserve what it stands for. The U.S. flag has been on the along side every soldier, sailor, and airmen on every battle field, in every war in some way, shape or form throughout the history of this country. Be it carried by a soldier, affixed to a soldiers uniform as a patch or painted on the side of a ship, plane or tank, the symbol of our freedom has always been there. Some of the most compelling images in history involve our flag. Who does not know about the Marines raising the flag on Iwo Jima in World War II? During the War of 1812 Francis Scott Key looked upon the flag at Fort McHenry in Baltimore Harbor and thought the flag was such a symbol that he wrote a poem about it that we now use as our National Anthem. That flag now has a prominent place in history and sits on display at the National Archives in Washington. This is the length that others have gone to honor the symbol of our nation. It is now our sacred duty to simply protect it.

In 1940, noting that the national bird needed protected, Congress passed the Bald Eagle Protection Act, which made it illegal to kill, harass, possess, or sell bald eagles. It was a full 27 years later that bald eagles were officially declared an endangered species. There was a Sentiment in 1940 to protect this symbol of nation long before it was endangered and that same sentiment for the flag exists today. A recent Gallup Poll showed that 81 percent of Americans support this effort. AB 79 has more than one-third of the Assembly and nearly half of the Senate as co-sponsors.

Add whatever personal thought you have.



# WISCONSIN STATE LEGISLATURE





To: Representative Michael Huebsch

AB 79  
folder

dates  
?

I find I've not written a memo of law on the flag statute, but gave only an oral opinion. Here goes a written attempt.

In *Wisconsin v. Mitchell*, 508 U.S. 476 (1993) the United States Supreme Court unanimously rejected an argument that a statute enhancing a sentence for a crime where the crime was motivated by a bias offended free speech. Mitchell argued that the Wisconsin penalty-enhancement statute was invalid because it punished the defendant's discriminatory motive, or reason for acting.

The Supreme Court observed that a defendant's motive for committing an offense is traditionally a factor in sentencing. We have many examples making it unlawful to discriminate because of a victim's race, color, religion, sex, etc. One may say that women are inferior, etc., but one can't act on that otherwise protected belief.

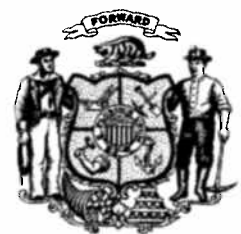
Similarly when one commits a crime we don't allow the defense, that the crime was committed to convey an otherwise protected message.

You can say you "don't like banks" - but you can't rob banks, and if the penalty for bank robbery were increased because the defendant hates banks more than credit unions that penalty would pass constitutional muster.

Thus - if you burn a flag in public you may violate a statute or ordinance about open fires etc., and the penalty might be enhanced by statutes simply because the burned material was a flag.



# WISCONSIN STATE LEGISLATURE



MIKE FAIRBANKS  
225-6119

AB 79  
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